

SENATE, No. 3002

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator THOMAS H. KEAN, JR.

District 21 (Essex, Morris, Somerset and Union)

SYNOPSIS

“Garden State Film and Digital Media Jobs Act”; expands existing film and digital media production tax credit programs.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT expanding the existing film and digital media production
2 tax credit programs, and amending P.L.2005, c.345.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to
8 read as follows:

9 1. a. A taxpayer, upon application to the Director of the
10 Division of Taxation in the Department of the Treasury and the
11 New Jersey Economic Development Authority, shall be allowed a
12 credit against the tax imposed pursuant to section 5 of P.L.1945,
13 c.162 (C.54:10A-5), in an amount equal to 20 percent of the
14 qualified film production expenses of the taxpayer during a
15 privilege period commencing after the effective date of P.L.2005,
16 c.345, provided that (1) at least 60 percent of the total film
17 production expenses, exclusive of post-production costs, of the
18 taxpayer will be incurred for services performed and goods used or
19 consumed in New Jersey, and (2) principal photography of the film
20 commences **[within]** the earlier of 180 days from the date of the
21 original application for the tax credit, or 150 days [after] from the
22 date of approval by the New Jersey Economic Development
23 Authority of the application for the credit.

24 The credit allowed against the tax imposed pursuant to section 5
25 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 22
26 percent for the qualified film production expenses of the taxpayer
27 during a privilege period that represent purchases of goods from a
28 qualified business located within an Urban Enterprise Zone, as
29 defined under P.L.1983, c.303 (C.52:27H-60 et seq.), or that
30 represent the purchase of services performed by a resident of an
31 Urban Enterprise Zone.

32 b. A taxpayer, upon application to the Director of the Division
33 of Taxation in the Department of the Treasury and the New Jersey
34 Economic Development Authority, shall be allowed a credit against
35 the tax imposed pursuant to section 5 of P.L.1945, c.162
36 (C.54:10A-5), in an amount up to 20 percent, as determined by the
37 authority of the qualified digital media content production expenses
38 of the taxpayer during a privilege period commencing after the
39 effective date of P.L.2007, c.257, provided that at least \$2,000,000
40 of the total digital media content production expenses of the
41 taxpayer will be incurred for services performed and goods used or
42 consumed in New Jersey and at least a significant percentage, as
43 determined by the authority, of the qualified digital media content
44 production expenses of the taxpayer will include wages and salaries
45 paid to **[one or more new]** full-time or full-time equivalent

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employees in New Jersey. For purposes of this subsection, "[new]
2 full-time or full-time equivalent employee" means a person
3 employed by the taxpayer for consideration for at least 35 hours a
4 week, or who renders any other standard of service generally
5 accepted by custom or practice as full-time or full-time equivalent
6 employment, whose wages are subject to withholding as provided in
7 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
8 who is a partner of a taxpayer that is an eligible partnership, who
9 works for the partnership for at least 35 hours a week, or who
10 renders any other standard of service generally accepted by custom
11 or practice as full-time or full-time equivalent employment, and
12 whose distributive share of income, gain, loss, or deduction, or
13 whose guaranteed payments, or any combination thereof, is subject
14 to the payment of estimated taxes, as provided in the "New Jersey
15 Gross Income Tax Act," N.J.S.54A:1-1 et seq [., and who is
16 determined by the authority to work in a newly created permanent
17 position according to criteria it develops]. "[New full-time] Full-
18 time or full-time equivalent employee" shall not include any person
19 who works as an independent contractor or on a consulting basis for
20 the taxpayer. [In determining the amount of any grant of tax
21 credits made pursuant to this subsection, the authority shall consider
22 the number of new full-time positions created by the taxpayer as
23 well as the quality of the full-time positions created, including but
24 not limited to the salaries and benefits provided to new full-time
25 employees. The authority, in consultation with the Division of
26 Taxation, shall establish rules for the recapture of all, or a portion
27 of, the grant of tax credits pursuant to this subsection in the event
28 the taxpayer fails to maintain the new full-time positions that were
29 included in calculating the qualified digital media content
30 production expenses of the taxpayer.]

31 The credit allowed against the tax imposed pursuant to section 5
32 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 22
33 percent for the qualified digital media content production expenses
34 of the taxpayer during a privilege period that represent purchases of
35 goods from a qualified business located within an Urban Enterprise
36 Zone, as defined under P.L.1983, c.303 (C.52:27H-60 et seq.), or
37 that represent the purchase of services performed by a resident of an
38 Urban Enterprise Zone.

39 c. The amount of the credit [applied] allowed under this
40 section against the tax imposed pursuant to section 5 of P.L.1945,
41 c.162, for a privilege period, when taken together with any other
42 credits allowed against the tax imposed pursuant to section 5 of
43 P.L.1945, c.162, shall not exceed 50 percent of the tax liability
44 otherwise due and shall not reduce the tax liability to an amount
45 less than the statutory minimum provided in subsection (e) of
46 section 5 of P.L.1945, c.162. The priority in which credits allowed
47 pursuant to this section and any other credits shall be taken shall be

1 as determined by the Director of the Division of Taxation. The
2 amount of the credit otherwise allowable under this section which
3 cannot be applied for the privilege period due to the limitations of
4 this subsection or under other provisions of P.L.1945, c.162 may be
5 carried over, if necessary, to the seven privilege periods following
6 the privilege period for which the credit was allowed.

7 d. A taxpayer may, with an application for a credit provided for
8 in subsection a. or subsection b. of this section, apply to the director
9 and the executive director of the authority for a tax credit transfer
10 certificate in lieu of the taxpayer being allowed any amount of the
11 credit against the tax liability of the taxpayer. The director and the
12 executive director of the authority may consult with the New Jersey
13 Motion Picture and Television Development Commission in
14 consideration of any application for approval of a tax credit or tax
15 credit transfer certificate under this section. The tax credit transfer
16 certificate, upon receipt thereof by the taxpayer from the director
17 and the authority, may be sold or assigned, in full or in part, to any
18 other taxpayer that may have a tax liability under P.L.1945, c.162
19 or N.J.S.54A:1-1 et seq., in exchange for private financial
20 assistance to be provided by the purchaser or assignee to the
21 taxpayer that has applied for and been granted the credit. The
22 certificate provided to the taxpayer shall include a statement
23 waiving the taxpayer's right to claim that amount of the credit
24 against the tax imposed pursuant to section 5 of P.L.1945, c.162
25 (C.54:10A-5) that the taxpayer has elected to sell or assign. The
26 sale or assignment of any amount of a tax credit transfer certificate
27 allowed under this section shall not be exchanged for consideration
28 received by the taxpayer of less than 75% of the transferred credit
29 amount. Any amount of a tax credit transfer certificate used by a
30 purchaser or assignee against a tax liability under P.L.1945, c.162
31 shall be subject to the same limitations and conditions that apply to
32 the use of a credit pursuant to subsection c. of this section. Any
33 amount of a tax credit transfer certificate obtained by a purchaser or
34 assignee under subsection a. of this section may be applied against
35 the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et
36 seq. and shall be subject to the same limitations and conditions that
37 apply to the use of a credit pursuant to section 2 of P.L.2005, c.345
38 (C.54A:4-12).

39 e. As used in this section:

40 "Digital media content" means any data or information that is
41 produced in digital form, including data or information created in
42 analog form but reformatted in digital form, text, graphics,
43 photographs, animation, sound and video content. "Digital media
44 content" does not mean content offerings generated by the end user
45 (including postings on electronic bulletin boards and chat rooms);
46 content offerings comprised primarily of local news, events,
47 weather or local market reports; public service content; electronic
48 commerce platforms (such as retail and wholesale websites);

1 websites or content offerings that contain obscene material as
2 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
3 content that are produced or maintained primarily for private,
4 industrial, corporate or institutional purposes; or digital media
5 content acquired or licensed by the taxpayer for distribution or
6 incorporation into the taxpayer's digital media content.

7 "Film" means a feature film, a television series or a television
8 show of ~~15~~ 22 minutes or more in length, intended for a national
9 audience. "Film" shall not include a production featuring news,
10 current events, weather and market reports or public programming,
11 talk show, game show, sports event, award show or other gala
12 event, a production that solicits funds, a production containing
13 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
14 3, or a production primarily for private, industrial, corporate or
15 institutional purposes.

16 "Loan out company" means a personal service corporation that
17 employs an actor or actress who is hired by a film or digital media
18 production company.

19 "Qualified digital media content production expenses" means an
20 expense incurred in New Jersey for the production of digital media
21 content. Qualified digital media content production expenses shall
22 include but shall not be limited to wages and salaries of individuals
23 employed in the production of digital media content on which the
24 tax imposed by the "New Jersey Gross Income Tax Act,"
25 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
26 software and hardware, data processing, visualization technologies,
27 sound synchronization, editing, and the rental of facilities and
28 equipment. Qualified digital media content production expenses
29 shall not include expenses incurred in marketing, promotion or
30 advertising digital media or other costs not directly related to the
31 production of digital media content. Costs related to the acquisition
32 or licensing of digital media content by the taxpayer for distribution
33 or incorporation into the taxpayer's digital media content shall not
34 be qualified digital media content production expenses.

35 "Qualified film production expenses" means an expense incurred
36 in New Jersey for the production of a film including post-
37 production costs incurred in New Jersey. Qualified film production
38 expenses shall include but shall not be limited to wages and salaries
39 of individuals employed in the production of a film on which the
40 tax imposed by the "New Jersey Gross Income Tax Act,"
41 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of
42 construction, operations, editing, photography, sound
43 synchronization, lighting, wardrobe and accessories and the cost of
44 rental of facilities and equipment. Qualified film production
45 expenses shall not include expenses incurred in marketing or
46 advertising a film.

1 "Total digital media content production expenses" means costs
2 for services performed and property used or consumed in the
3 production of digital media content.

4 "Total film production expenses" means costs for services
5 performed and tangible personal property used or consumed in the
6 production of a film.

7 "Post-production costs" means the costs of the phase of
8 production that follows principal photography, in which raw
9 footage is cut and assembled into a finished film with sound
10 synchronization and visual effects.

11 f. The Director of the Division of Taxation in the Department
12 of the Treasury, in consultation with the New Jersey Motion Picture
13 and Television Development Commission and the New Jersey
14 Economic Development Authority, shall adopt rules in accordance
15 with the "Administrative Procedure Act," P.L.1968, c.410
16 (C.52:14B-1 et seq.), as are necessary to implement this act
17 including examples of qualified film production and digital media
18 content production expenses, a requirement that an applicant submit
19 an agreed-upon procedures report prepared by an independent
20 certified public accountant to verify the tax credit claim, and the
21 procedures and forms to apply for a credit and for a tax credit
22 transfer certificate necessary for a taxpayer to sell or assign an
23 amount of tax credit under this section. The value of credits,
24 including tax credits allowed through the granting of tax credit
25 transfer certificates, approved by the director and the authority
26 pursuant to subsection a. of this section and pursuant to section 2 of
27 P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total of
28 \$10,000,000 in any fiscal year through fiscal year 2009, and a
29 cumulative total of \$50,000,000 in fiscal year 2010 and every fiscal
30 year thereafter, to apply against the tax imposed pursuant to section
31 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to
32 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If
33 the cumulative total amount of credits and tax credit transfer
34 certificates allowed to taxpayers for privilege periods or taxable
35 years commencing during a single fiscal year under subsection a. of
36 this section and section 2 of P.L.2005, c.345 (C.54A:4-12) exceeds
37 the amount of credits available in that year, then taxpayers who
38 have first applied for and have not been allowed a credit or tax
39 credit transfer certificate amount for that reason shall be allowed, in
40 the order in which they have submitted an application, the amount
41 of tax credit or certificate on the first day of the next succeeding
42 fiscal year in which tax credits and tax credit transfer certificates
43 under subsection a. of this section and section 2 of P.L.2005, c.345
44 (C.54A:4-12) are not in excess of the amount of credits available.
45 The value of credits, including tax credits allowed through the
46 granting of tax credit transfer certificates, approved by the director
47 and the authority pursuant to subsection b. of this section shall not
48 exceed a total of \$5,000,000 in any fiscal year through fiscal year

1 2009, and a cumulative total of \$10,000,000 in fiscal year 2010 and
2 every fiscal year thereafter, to apply against the tax imposed
3 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total
4 amount of credits and tax credit transfer certificates allowed to
5 taxpayers for privilege periods or taxable years commencing during
6 a single fiscal year under subsection b. of this section exceeds the
7 amount of credits available in that year, then taxpayers who have
8 first applied for and have not been allowed a credit or tax credit
9 transfer certificate amount for that reason shall be allowed, in the
10 order in which they have submitted an application, the amount of
11 tax credit or certificate on the first day of the next succeeding fiscal
12 year in which tax credits and tax credit transfer certificates under
13 subsection b. of this section are not in excess of the amount of
14 credits available. The Executive Director of the New Jersey
15 Economic Development Authority, in conjunction with the Director
16 of the Division of Taxation shall prepare and submit a report to the
17 Governor and the Legislature on the effectiveness of the credit as an
18 incentive for encouraging film productions and digital media
19 content productions to locate in New Jersey which shall be
20 completed before the third taxable year or privilege period in which
21 a credit may be claimed.

22 g. For the purpose of determining eligibility for or the amount
23 of any grant of tax credits pursuant to this section, the authority
24 shall not include any job that is included in the calculation of a
25 business employment incentive grant pursuant to the provisions of
26 P.L.1996, c.26 (C.34:1B-124 et al.) or a business retention and
27 relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).

28 h. Amounts of tax credits approved to a loan out company not
29 registered to do business in New Jersey shall be subject to New
30 Jersey gross income tax withholding at the applicable rate under the
31 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
32 (cf: P.L.2007, c.257, s.1)

33
34 2. Section 2 of P.L.2005, c.345 (C.54A:4-12) is amended to
35 read as follows:

36 2. a. A taxpayer, upon application to the Director of the
37 Division of Taxation in the Department of the Treasury and the
38 New Jersey Economic Development Authority, shall be allowed a
39 credit against the tax otherwise due for the taxable year under the
40 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an
41 amount equal to 20 percent of the qualified film production
42 expenses of the taxpayer during a taxable year commencing after
43 the effective date of P.L.2005, c.345, provided that (1) at least 60
44 percent of the total production expenses, exclusive of post-
45 production costs, of the taxpayer will be incurred for services
46 performed and goods used or consumed in New Jersey, and (2)
47 principal photography of the film commences **[within]** the earlier
48 of 180 days from the date of the original application for the tax

1 credit, or 150 days [after] from the date of approval by the New
2 Jersey Economic Development Authority of the application for the
3 credit.

4 The credit allowed against the tax otherwise due under the "New
5 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an
6 amount equal to 22 percent for the qualified film production
7 expenses of the taxpayer during a privilege period that represent
8 purchases of goods from a qualified business located within an
9 Urban Enterprise Zone, as defined under P.L.1983, c.303
10 (C.52:27H-60 et seq.), or that represent the purchase of services
11 performed by a resident of an Urban Enterprise Zone.

12 b. The amount of the credit allowed pursuant to this section
13 shall be applied against the tax otherwise due under N.J.S.54A:1-1
14 et seq. after all other credits and payments. If the credit exceeds the
15 amount of tax otherwise due, that amount of excess shall be an
16 overpayment for the purposes of N.J.S.54A:9-7.

17 c. A taxpayer may, with an application for a credit provided for
18 in subsection a. of this section, apply to the director and the
19 executive director of the authority for a tax credit transfer certificate
20 in lieu of the taxpayer being allowed any amount of the credit
21 against the tax liability of the taxpayer. The director and the
22 executive director of the authority may consult with the New Jersey
23 Motion Picture and Television Development Commission in
24 consideration of any application for approval of a tax credit or tax
25 credit transfer certificate under this section. The tax credit transfer
26 certificate, upon receipt thereof by the taxpayer from the director
27 and the authority, may be sold or assigned, in full or in part, to any
28 other taxpayer that may have a tax liability under N.J.S.54A:1-1 et
29 seq. or P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for
30 private financial assistance to be provided by the purchaser or
31 assignee to the taxpayer that has applied for and been granted the
32 credit. The certificate provided to the taxpayer shall include a
33 statement waiving the taxpayer's right to claim that amount of the
34 credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq.,
35 that the taxpayer has elected to sell or assign. The sale or
36 assignment of any amount of a tax credit transfer certificate allowed
37 under this section shall not be exchanged for consideration received
38 by the taxpayer of less than 75% of the transferred credit amount.
39 Any amount of a tax credit transfer certificate used by a purchaser
40 or assignee against a tax liability under N.J.S.54A:1-1 et seq., shall
41 be subject to the same limitations and conditions that apply to the
42 use of a credit pursuant to subsection b. of this section. Any amount
43 of a tax credit transfer certificate obtained by a purchaser or
44 assignee under this section may be applied against the purchaser's
45 or assignee's tax liability under P.L.1945, c.162 and shall be subject
46 to the same limitations and conditions that apply to the use of a
47 credit pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39).

1 d. A partnership shall not be allowed a credit under this section
2 directly, but the amount of credit or tax credit transfer certificate of
3 a taxpayer in respect of a distributive share of partnership income
4 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
5 seq., shall be determined by allocating to the taxpayer that
6 proportion of the credit or certificate acquired by the partnership
7 that is equal to the taxpayer's share, whether or not distributed, of
8 the total distributive income or gain of the partnership for its
9 taxable year ending within or with the taxpayer's taxable year. For
10 the purposes of subsection b. of this section, the amount of tax
11 liability that would be otherwise due of a taxpayer is that proportion
12 of the total liability of the taxpayer that the taxpayer's share of the
13 partnership income or gain included in gross income bears to the
14 total gross income of the taxpayer. The provisions of subsection c.
15 of this section shall apply to the amount of any credit or certificate
16 of a taxpayer in respect of a distributive share of partnership
17 income.

18 e. As used in this section:

19 "Film" means a feature film, a television series or a television
20 show of ~~15~~ 22 minutes or more in length, intended for a national
21 audience. Film shall not include a production featuring news,
22 current events, weather and market reports or public programming,
23 talk show, game show, sports event, award show or other gala
24 event, a production that solicits funds, a production containing
25 obscene material as defined in N.J.S.2C:34-2 and N.J.S.2C:34-3, or
26 a production primarily for private, industrial, corporate or
27 institutional purposes.

28 "Loan out company" means a personal service corporation that
29 employs an actor or actress who is hired by a film or digital media
30 production company.

31 "Qualified film production expenses" means an expense incurred
32 in New Jersey for the production of a film including post-
33 production costs incurred in New Jersey. Qualified film production
34 expenses shall include but shall not be limited to wages and salaries
35 of individuals employed in the production of a film on which the
36 tax imposed by the "New Jersey Gross Income Tax Act,"
37 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of
38 construction, operations, editing, photography, sound
39 synchronization, lighting, wardrobe and accessories and the cost of
40 rental of facilities and equipment. Qualified film production
41 expenses shall not include expenses incurred in marketing or
42 advertising a film.

43 "Total film production expenses" means costs for services
44 performed and tangible personal property used or consumed in the
45 production of a film.

46 "Post production costs" means the costs of the phase of
47 production that follows principal photography, in which raw

1 footage is cut and assembled into a finished film with sound
2 synchronization and visual effects.

3 f. The Director of the Division of Taxation in the Department
4 of the Treasury, in consultation with the New Jersey Motion Picture
5 and Television Development Commission and the New Jersey
6 Economic Development Authority, shall adopt rules in accordance
7 with the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.), as are necessary to implement this act
9 including examples of qualified film production expenses, a
10 requirement that an applicant submit an agreed-upon procedures
11 report prepared by an independent certified public accountant to
12 verify the tax credit claim, and the procedures and forms to apply
13 for a credit and for a tax credit transfer certificate necessary for a
14 taxpayer to sell or assign an amount of tax credit under this section.
15 The amount of credits, including tax credits allowed through the
16 granting of tax credit transfer certificates, approved by the director
17 and the authority pursuant to subsection a. of this section and
18 pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39) shall not
19 exceed a cumulative total of \$10,000,000 in any fiscal year through
20 fiscal year 2009, and a cumulative total of \$50,000,000 in fiscal
21 year 2010 and every fiscal year thereafter, to apply against the tax
22 imposed under N.J.S.54A:1-1 et seq., and the tax imposed pursuant
23 to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative
24 total amount of credits and tax credit transfer certificates allowed to
25 taxpayers for taxable years or privilege periods commencing during
26 a single fiscal year under this section and subsection a. of section 1
27 of P.L.2005, c.345 (C.54:10A-5.39) exceeds the amount of credits
28 available in that year, then taxpayers who have first applied for and
29 have not been allowed a credit or tax credit transfer certificate
30 amount for that reason shall be allowed, in the order in which they
31 have submitted an application, the amount of tax credit or
32 certificate on the first day of the next succeeding fiscal year in
33 which tax credits and tax transfer certificates under this section and
34 subsection a. of section 1 are not in excess of the amount of credits
35 available. The Executive Director of the New Jersey Economic
36 Development Authority, in conjunction with the Director of the
37 Division of Taxation shall prepare and submit a report to the
38 Governor and the Legislature on the effectiveness of the credit as an
39 incentive for encouraging film productions to locate in New Jersey
40 which shall be completed before the third taxable year or privilege
41 period in which a credit may be claimed.

42 g. Amounts of tax credits approved to a loan out company not
43 registered to do business in New Jersey shall be subject to New
44 Jersey gross income tax withholding at the applicable rate under the
45 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
46 (cf: P.L.2007, c.257, s.2)

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